



IN THE
Supreme Court of the United States
October Term, 1979

No. 79-758

GASORAMA, INC.,

Petitioner,

v.

IMPERIAL GAS COMPANY OF
PUERTO RICO, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF PUERTO RICO

**RESPONDENT'S BRIEF IN OPPOSITION
TO THE PETITION**

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Respondent, Imperial Gas Company of Puerto Rico, Inc. respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Supreme Court of Puerto Rico's decision in this case.

Opinions Below

The opinions below, which are not reported, appear as Appendices to the Petition:

Resolutions of the Supreme Court of Puerto Rico dated June 28, July 26, and August 16, 1979:

Petition Appendix A(1), (2), (3);

Summary Judgment of the Superior Court of Puerto Rico, Caguas Part:

Petition Appendix B.

Jurisdiction

Petitioner seeks to invoke the jurisdiction of the Court under 28 U.S.C. § 1258(3). For the reasons set forth below, Respondent respectfully submits that this Court lacks jurisdiction to entertain the Petition.

Questions Presented

1. Whether an important and controlling federal question is presented by an order of the Supreme Court of Puerto Rico denying a petition to review the decision of a trial court granting a motion for summary judgment.

2. Whether an order of the Supreme Court of Puerto Rico denying a petition for review, entered in that court's discretion pursuant to the Judicial Code of the Commonwealth of Puerto Rico, may be reviewed under 28 U.S.C. § 1258(3).

Statutes Involved

The relevant statutes and Rules of Procedure are reprinted in Appendix I and are as follows:

1. Sections 1258 and 1293 of the Judicial Code, 28 U.S.C. §§ 1258 and 1293;
2. Section 37 of the Judicial Code of Puerto Rico, P.R. Laws Ann. Tit. 4, § 37;
3. Rule 36 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 36;
4. Rule 34.6 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 34.6;

5. Rules 39.2 and 39.3 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 39.2 and R 39.3;

6. Rule 17 of the Rules of the Supreme Court of Puerto Rico, P.R. Laws Ann. Tit. 4, App. I-A R 17.

Statement of the Case

The Petition seeks review of the judgment of the Supreme Court of Puerto Rico declining to review the lower court's grant of a motion for summary judgment. Under 28 U.S.C. § 1258, that is the only judgment in this case which is subject to review by this Court. The question petitioner presents for review, however, relates not to the action of the Supreme Court of Puerto Rico but to the rulings of the Superior Court. Thus, the essence of the Petition is that Gasorama, Inc. ("Gasorama") was "denied its day in court" by the trial court's failure to direct the production of certain documents and by its rejection of certain defenses and a counterclaim in a collection action initiated by Imperial Gas Company of P.R., Inc. ("Imperial"). In reality therefore, Gasorama is seeking review of a discovery ruling made by the trial court and its decision as to the propriety of a counterclaim and certain defenses. This Court is without jurisdiction to review those rulings. To the extent that review is sought of the judgment of the Supreme Court of Puerto Rico denying a petition to review the judgment of the trial court, that was a decision made in the exercise of the court's discretion and presents no question worthy of consideration by this Court.

Petitioner's Statement contains a number of inaccuracies and significant omissions. The discovery issue arose out of an extensive request for the production of documents (R. 25)¹ made by Gasorama on March 15, 1978 even though

1. R. references are to the record on appeal.

it had not filed a responsive pleading as of that time. Imperial opposed the requested production, pointing out *inter alia* that Gasorama had access to the documents sought and that their production was unnecessary inasmuch as Gasorama had recognized the validity of the debt which formed the basis for the collection action (R. 34). A hearing was set for May 31, 1978 and, after a continuance was requested by Gasorama (R. 99), it was rescheduled for June 8, 1978. Gasorama did not appear at the hearing (R. 100). Instead of denying the discovery out of hand, the trial court directed a partial production (R. 42). When Gasorama sought reconsideration, another hearing was set for September 11, 1978. On September 6, 1978 Gasorama requested still another continuance for at least 70 days (R. 106). Undoubtedly influenced by this request and the fact that Gasorama had earlier filed no fewer than three additional motions for extensions of time (R. 96, 101, 102), the trial court denied the motion for reconsideration and entered a finding of dilatory conduct on the part of Gasorama (R. 47).²

On December 22, 1978, Imperial moved for summary judgment, relying on an affidavit establishing the amount of the debt and the fact that it was due (R. 53).³ Imperial also submitted an authenticated letter from Gasorama's officials in which they recognized the validity of the debt. In opposing the motion, Gasorama failed to file the necessary affidavits. Even after this failure was emphasized by Imperial, Gasorama elected to rest on its pleadings and judgment was entered against it.

2. By the time the case ended, Gasorama had filed four additional motions for continuances or extensions of time, for a total of ten. (R. 117, 119, 120, 121).

3. After the matter was briefed, Imperial ultimately conceded that the court had jurisdiction to consider Gasorama's federal claims as defenses (R. 74).

Petitioner then filed a petition for review before the Supreme Court of Puerto Rico and stated as the question presented:

Whether the Superior Court erred in entering judgment without allowing petitioner-defendant the opportunity to effect discovery and adequately prepare its case and defend against Plaintiff's complaint. (R. 9).

After the petition for review was denied, Gasorama filed a motion for reconsideration and, after its denial, filed yet another motion which was also denied.

The issues in this collection action were decided, and decided properly, on the merits. The Petition is the latest in a series of attempts by Gasorama to overturn an adverse decision, a decision which resulted in large part from its own dilatory tactics and failure to comply with the applicable rules. There is nothing in this case which warrants the attention of this Court and the Petition for Writ of Certiorari should be denied.

ARGUMENT

I.

Petitioner improperly seeks review of the judgment of the Superior Court.

Petitioner is apparently uncertain as to which judgment below this Court should review. Although it asks that a writ be issued to review the judgment of the Supreme Court of Puerto Rico denying the petition for review, the Questions Presented refer to "the Commonwealth Court" and relate to the action of the trial court. Since it is the decision of the trial court of which Gasorama complains and issue is not taken with the action of the Supreme Court of Puerto Rico, Petitioner is apparently seeking re-

view of the judgment of the Superior Court. To the extent that Petitioner does so, this Court is without jurisdiction.

Section 1258 of Title 28 of the United States Code expressly provides for review by certiorari only of "[f]inal judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico".⁴ It does not provide for the review of a judgment of the Superior Court of Puerto Rico or any other inferior court and this Court therefore has no jurisdiction to review the judgment of the trial court.

II.

The denial of a petition for review is within the discretion of the court below and may not be reviewed by writ of certiorari.

Review is no more appropriate even if the Petition can be read as seeking review of the judgment of the Supreme Court of Puerto Rico. That judgment was the denial of a petition for review, was within the discretion of that court, and does not present a question worthy of review by this Court.

Gasorama did not seek an appeal as of right from the judgment of the Superior Court, even though such an appeal is provided for by the Judicial Code of Puerto Rico under certain circumstances.⁵ Instead, Gasorama sought review of that judgment by the Supreme Court of Puerto Rico "through a writ of review to be issued at its discretion"

4. In this respect, § 1258 is the same as § 1293, which it superseded. Under § 1293, appeals to the Circuit Court of Appeals for the First Circuit were permitted only from judgments of the Supreme Court of Puerto Rico.

5. As discussed in more detail below, the Judicial Code provides for such an appeal when substantial constitutional questions are present. Petitioner's failure to pursue this avenue of appeal is tantamount to an admission that no substantial constitutional questions are present in this litigation.

P.R. Laws Ann. Tit. 4, § 37(b). Thus, the decision as to whether or not a judgment of the Superior Court will be heard by the Supreme Court is one which rests entirely within the discretion of that court. If a petition for review is denied, the only reviewable issue in connection with that decision is whether the denial was an abuse of discretion. This is confirmed by reference to 28 U.S.C. § 1293, the predecessor of § 1258. Under that section, pursuant to which appeals from judgments of the Supreme Court of Puerto Rico were to the Court of Appeals for the First Circuit, the only question which could be decided by the Court of Appeals was whether there had been an abuse of discretion in denying a petition for discretionary review. *International Basic Economy Corp. v. Blanco Lugo*, 267 F.2d 263, *further opinion*, 271 F.2d 437 (1st Cir. 1959), *cert. denied* 361 U.S. 948 (1960). Although appeals under § 1293 were as of right, the standard of review is the same. The only issue presented by the decision of the Supreme Court of Puerto Rico declining to review the decision of the trial court is whether that was an abuse of discretion. Such a question, however, is not among those which this Court reviews on writ of certiorari.

III.

There is no important or controlling question of federal law.

Under Rule 19 of the Supreme Court Rules, in deciding whether to review a decision of a state court, the Supreme Court first requires that there be "special and important reasons therefor" and generally will consider whether the court "has decided a federal question of substance not theretofore determined by this court, or has decided it in

a way probably not in accord with applicable decisions of this court." U.S. Sup. Ct. Rule 19(1)(a), 28 U.S.C. Not only were no federal questions decided by the Supreme Court of Puerto Rico, much less decided in a manner in conflict with the decisions of this Court, no federal questions were raised by Gasorama in its assignment of errors or questions presented for review to the Supreme Court of Puerto Rico. As stressed by Stern and Gressman:

This jurisdictional factor is especially significant where the highest state court fails or refuses to pass expressly upon the federal question. In that situation, the party invoking the Supreme Court's jurisdiction has the burden of showing that he properly raised the question, so that the state court's failure to deal with it was not for want of proper presentation. The Court has stated many times that when "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Supreme Court Practice*, at 214 (5th ed. BNA) (citations omitted).

No such questions were presented in this case. As admitted in the Petition:

The basic question [before the Supreme Court of Puerto Rico] was whether the Superior Court had failed to allow Gasorama a reasonable opportunity to make the necessary discovery to allow it to prepare its case adequately and to defend itself against Imperial's claim. Petition at 6.

Thus, there is simply no decision on a federal question which this Court may review. This fact cannot be obscured by the manner in which Petitioner has framed the Questions Presented. Gasorama states that this case presents a question as to whether it has been deprived of

its constitutional due process rights by the partial denial of discovery by the trial court. That, however, presents purely procedural questions, and, as discussed below, there are non-federal bases for the court's decision.

This is a simple collection action in which Petitioner conceded the underlying debt. That the issues in this case do not rise to a constitutional level is confirmed by the procedure followed by the Petitioner itself. Under P.R. Laws Ann. Tit. 4, § 37(a) there is an appeal as of right to the Supreme Court of Puerto Rico in cases involving substantial constitutional questions. Gasorama did not, however, file an appeal with the Supreme Court of Puerto Rico, which it surely would have done had it then thought constitutional issues were involved, but instead sought discretionary review. In addition, in its statement of the issues presented to the Supreme Court of Puerto Rico, Gasorama did not assert that any constitutional or even federal questions were involved.

It is thus more than apparent that, at this very late stage, Petitioner has tried to recharacterize its case as involving issues of constitutional dimensions so as to come within the guidelines for the exercise of review by this Court. That attempt fails totally and the non-constitutional, non-federal nature of the issues cannot be disguised.

IV.

The decision of the Supreme Court of Puerto Rico might have rested on non-federal grounds and certiorari is therefore inappropriate.

This Court has denied certiorari when it appeared that a decision to deny review might have rested on non-federal

grounds.⁶ There are numerous non-federal grounds on which the decision by the Supreme Court of Puerto Rico to decline review might have rested:

(1) Gasorama forfeited or waived its right to the discovery it requested. It first obtained a continuance of the hearing on the discovery question and then did not appear at the actual hearing. Then, when a ruling was entered, a request for reconsideration was filed and a second hearing date set. Petitioner attempted to have this hearing continued as well. These actions resulted in a finding by the trial court that Gasorama was unnecessarily delaying the proceedings. Rule 34.6 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 34.6, gives the trial courts in Puerto Rico ample discretion to prevent the misuse of discovery proceedings. In declining to grant the petition for review, the Supreme Court of Puerto Rico was adhering to the established rule that decisions on discovery in the Superior Courts of Puerto Rico are solely within the discretion of those courts and will not be disturbed in the absence of an abuse of discretion. The Supreme Court of Puerto Rico clearly articulated this rule in *Sierra v. Superior Court*, 81 P.R.R. 540 (1959), a case involving interrogatories which had been sustained by the Superior Court. In upholding the decision below, the court stated:

6. See *Stembridge v. Georgia*, 343 U.S. 541, 547 (1952), where this Court stated:

At this stage, the Supreme Court of Georgia could have denied certiorari on adequate state grounds. Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a non-federal ground, this Court will not take jurisdiction to review the judgment. (citations omitted) See also *Ellis v. Dixon*, 349 U.S. 458, 459 (1955).

On appeal or review, our function is limited to deciding whether the Superior Court abused its discretion in rejecting those objections and ordering all the questions in the interrogatory to be answered. It is not up to us to determine the propriety of discovery as if we were a court of first instance. Although it is not beyond the ambit of review, unless it is shown that the lower court lacks a reasonable ground or hinders the substantial rights of a party, the judgment of the trial judge who presided [at] the proceeding should prevail. *Id.*, at 557 (footnote omitted).

(2) Gasorama's action in seeking no fewer than ten continuances and extensions of time constituted a failure to prosecute which warranted the dismissal of its defenses and counterclaim pursuant to Rules 39.2 and 39.3 of the Puerto Rico Rules of Civil Procedure, P. R. Laws Ann. Tit. 32, App. II R 39.2 and R 39.3.

(3) Gasorama's failure to oppose Imperial's Motion for Summary Judgment with counter-affidavits justified judgment against it pursuant to the provisions of Rule 36 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 36. As decided by the Supreme Court of Puerto Rico in the case of *Valcourt Questell v. Superior Court*, 89 P.R.R. 809, 814 (1964):

the other party against whom the judgment is sought cannot defeat the motion by remaining idle and relying, as was done in this case, on the facts stated in the allegations of the complaint.

See also *Cortes v. Heirs of Cortes*, 83 P.R.R. 660 (1961).

Petitioner attempted to justify its failure to file evidentiary affidavits by an unsworn assertion that the necessary information to prepare them was under the exclusive control of respondent. This allegation,

which was denied by Imperial, failed to meet the requirements of Rule 36.6 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 36.6. That Rule establishes the procedure to be followed when, for reasons which are well grounded and stated under oath, a party is unable to present by affidavits facts essential to justify its opposition to a motion for summary judgment.

(4) In its assignment of error or questions presented, Gasorama failed to allege properly and raise the objection that the trial court's partial denial of discovery amounted to a denial of due process. It also failed to raise properly the objection that the trial court had erred in ruling on the federal statutory claims, as required by Rule 17 of the Rules of the Supreme Court of Puerto Rico, 32 P.R. Laws Ann. Tit. 4, App. I-A R 17.

Conclusion

This is an action for the collection of a debt which Petitioner has sought to elevate to one involving issues of constitutional significance. In fact, it presents no questions which warrant consideration by this Court and Petitioner is, in reality, seeking from this Court the appellate review which the Supreme Court of Puerto Rico, in its discretion, declined to grant. The Petition having failed to set forth any basis for review by this Court under § 1258 of the Judicial Code, the Petition for a Writ of Certiorari should be denied.

December 13, 1979

Respectfully submitted,

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APPENDIX I—STATUTES

1. Sections 1258 and 1293 of the Judicial Code, 28 U.S.C. §§ 1258 and 1293 (Repealed. Pub.L. 87-189, § 3, Aug. 30, 1961, 75 Stat. 417).

§ 1258. Supreme Court of Puerto Rico; appeal; certiorari

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of the Commonwealth of Puerto Rico on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

§ 1293. Final decisions of Puerto Rico and Hawaii Supreme Courts

The courts of appeals for the First and Ninth Circuits shall have jurisdiction of appeals from all final decisions of the supreme courts of Puerto Rico and Hawaii, respectively in all cases involving the Constitution, laws or treaties of the United States or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the value in controversy exceeds \$5,000, exclusive of interest and costs.

2. Section 37 of the Judicial Code of Puerto Rico, P.R. Laws Ann. Tit. 4, § 37.

§ 37.—Review of rulings of Court of First Instance

(a) Save as provided in subsections (d) and (e) of this section, final judgments rendered by the Superior Court in civil cases involving or deciding a substantial constitutional question under the Constitution of the United States or of Puerto Rico shall be appealable to the Supreme Court. Provided, that final judgments rendered in criminal cases originated in the Superior Court and in trial de novo before the Superior Court, shall be appealable to the Supreme Court or to the appellate session or division of the Superior Court, as the Chief Justice may determine pursuant to the regulation adopted to such effect by the Supreme Court. Once the bill of appeal is filed, all proceedings in the Superior Court shall be stayed with respect to the judgment or the part thereof appealed from, or to the questions comprised therein; but the Superior Court may proceed with the action as to any other question involved therein not comprised in the appeal, and, if the judgment appealed from

provides for the sale of things susceptible of loss or deterioration, it may direct that same be sold and that the proceeds be deposited until the Supreme Court renders judgment.

(b) Any other final judgment of the Superior Court may be reviewed at the request of the aggrieved party by the Supreme Court through a writ of review to be issued at its discretion. The filing of a petition for review shall stay all proceedings in the Superior Court with respect to the judgment or that part thereof sought to be reviewed, or to the questions comprised therein, until the Supreme Court resolves. Notwithstanding, the Superior Court may proceed with the action as to any question involved therein not comprised in the writ of review, and, if the judgment appealed from, provides for the sale of things susceptible to deterioration, it may direct that same be sold and that the proceeds be deposited until the Supreme Court resolves.

(c) The Supreme Court of Puerto Rico may, in the exercise of its discretion, issue a writ of certification to bring forthwith before it, consider and resolve, any case pending on appeal or review before the Superior Court or an appellate session or division thereof, if it deems that the public importance of same justifies a deviation from the ordinary proceeding and a direct adjudication by the Supreme Court. The exceptional writ of certification may be issued only at the request of a party once the writ of appeal or of review is filed in the Superior Court. The filing of a petition for certification shall not stay the proceedings before the Superior Court, but the latter may not render

judgment in the case unless the Supreme Court denies the petition for certification.

(d) The judgments rendered by the Superior Court in appeals originated in the District Court and in review actions based on the record of the proceedings at administrative level, the decisions, orders or resolutions of administrative organizations, may be reviewed by the Supreme Court through certiorari to be issued at its discretion and not otherwise.

(e) The judgments rendered by an appellate session or division in criminal cases originated in the Superior Court shall be reviewed by the Supreme Court exclusively through certiorari to be issued at its discretion. The judgments rendered by said appellate session or division in criminal cases originated in the District Court shall be reviewable by the Supreme Court through certiorari only when a substantial constitutional question is presented. Any other judgment, dictum or resolution rendered by the appellate session or division may be reviewed by the Supreme Court through certiorari to be issued at its discretion and not otherwise.

(f) Any resolution rendered by the Superior Court may be reviewed by the Supreme Court through certiorari to be issued at its discretion and not otherwise.

(g) The filing of a bill of appeal in a case where the appropriate action is a writ of review shall not be sufficient ground for dismissal; and in such case the bill of appeal shall be considered for all pertinent purposes as if it were a petition for a

writ of review duly filed before the Supreme Court on the date on which it was filed in the Secretariat of the Superior Court. Nor shall it be sufficient ground for dismissal the fact that a party petitions for a writ of review against an appealable judgment; and in such case the petition for a writ of review shall be considered for all pertinent purposes as if it were a bill of appeal duly filed before the Superior Court.

3. Rule 36 of the Puerto Rico Rules of Civil Procedure. P.R. Laws Ann. Tit. 32, App. II R 36.

Rule 36. Summary Judgment

36.1 For claimant

A party seeking to recover upon a claim, counterclaim, cross-claim, or third-party claim, or to obtain a declaratory judgment may, at any time after the expiration of 10 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

36.2 For defending party

A party against whom a claim, counterclaim, cross-claim or third-party claim is asserted or a declaratory judgment is sought may at any time move, with or without supporting affidavits, for a summary judgment in his favor as to all or any part thereof.

36.3 Motion and proceedings thereon

The motion shall be served upon the adverse party at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Such judgment may be rendered for or against either party to the action.

36.4 Case not fully adjudicated on motion

If on motion under Rule 36 judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established and the trial shall be conducted accordingly.

36.5 Form of affidavits; further testimony

Supporting and opposing affidavits shall be made on personal knowledge of the affiant, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. If a motion for summary judgment is supported in the manner provided by Rule 36, the opposing party may not rely solely on the assertions or denials made in the pleadings, but shall be bound to answer in such detail and specifically as the moving party would have done, stating those material facts which in his judgment he seeks to establish. Upon failure to answer under oath judgment shall be rendered against him.

36.6 When affidavits are unavailable

Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained, or depositions to be taken, or discovery to be had, or may make such other order as is just.

36.7 Affidavits made in bad faith

Should it appear to the satisfaction of the court that any of the affidavits presented is presented in

bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

4. Rule 34.6 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 34.6.

34.6 [Time to use mechanisms]

Mechanisms to discover evidence established and regulated by Rules 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 may only be initiated and used by the parties within the term of sixty (60) days reckoned from the date the answer to the complaint was served, unless the court discretionally, at the request of a party and for justified reasons not ascribable to carelessness or indifference of the party requesting the extension or of his attorney, and under the conditions that it deems just, may extend such term.

In counterclaims, third-party claims, cross claims, the term shall be reckoned from the date of the answer thereto. The court, discretionally and for founded reasons, may shorten or extend said term under the conditions it may deem just and that guarantee the prompt solution of the controversies.

5. Rules 39.2 and 39.3 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. Tit. 32, App. II R 39.2 and R 39.3.

39.2 Dismissal

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 43.1. Unless the court in its order for dismissal otherwise specifies, a dismissal under Rule 39.2 and any dismissal, other than a dismissal for lack of jurisdiction or failure to join an indispensable party, operates as an adjudication upon the merits.

39.3 Dismissal of counterclaim, cross-claim, or third-party claim

The provisions of Rule 39 apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to Rule 39.1(a) shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.